SUPREME COURT OF THE UNITED STATES.

No. 56.

WILLIAM G. COOK, PLAINTIFF IN ERROR,

VERSUS

JOHN L. MOFFAT AND JOSEPH CURTIS, DEFENDANTS IN ERROR.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	*Print.*
Writ	1	3
Declaration	2	4
Rule Plea	5	5
Plea and Issue	5	6
Averment relinquished	5	6
Case stated	6	6
Judgments for the Plaintiffs upon the case stated	9	8
Memorandum	10	8
Writ of Error	11	9
Bond for Costs	13	10
Citation	14	11

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the eighth day of April, in the year of our Lord one thousand eight hundred and thirty-six.

Present: the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, Upton S. Heath, judge of Maryland district, Nathaniel Williams, Esq. attorney, Nicholas Snyder, Esq. marshal, Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

JOHN L. MOFFAT and JOSEPH CURTIS *surog. partners of* JONATHAN WILMARTH.

Be it remembered, that heretofore, to wit, on the ninth day of July, in the year of our Lord one thousand eight hundred and thirty-five, the said John L. Moffat and Joseph Curtis, by Edward Hinkley their attorney, prosecuted and sued forth out of the circuit court here, the writ of the United States of America of capias ad respondendum, directed to the marshal of the Maryland district, in the words and of the tenor following, to wit:

WRIT.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the Marshal for the Maryland district—greeting.

We command you that you take Willlam G. Cook, a citizen of the State of Maryland, and late of the district of Maryland, jeweller and watch-maker, if he shall be found in your district, and that him so taken you safe keep, so that you have his body before the judges of the circuit court of the United States for the fourth circuit, in and for the Maryland district, at the United States court room, in the city of Baltimore, on the first day of November next, to answer unto John L. Moffat and Joseph Curtis, both citizens of the State of New York, one of the United States aforesaid, surviving partners of Jonathan Wilmarth, late of said State of New York, deceased, in a plea of trespass on the case, and so forth. Hereof fail not at your peril, and have you then and there this writ.

Witness the honorable Joseph Story, senior associate justice of our supreme court, the second Monday in January, in the year of our Lord one thousand eight hundred and thirty five.

E. H.—Issued 9th day of July, 1835.

[SEAL.] THOMAS SPICER, *Clerk Circuit Court.*

And the aforesaid John L. Moffat and Joseph Curtis, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said William G. Cook in the plea aforesaid, in form following, to wit:

DECLARATION.

UNITED STATES OF AMERICA;

Fourth Circuit of the Circuit Court of the U. S. Dist. of Maryland.

William G. Cook, a citizen of the State of Maryland, and late of the district of Maryland, jeweller and watch-maker, was attached to answer unto John L. Moffat and Joseph Curtis, both citizens of the State of New York, one of the United States aforesaid, surviving partners of Jonathan Wilmarth, late of the said State of New York, deceased, in a plea of trespass, on the case &c. And whereupon, the the said John L. Moffat and Joseph Curtis, the plaintiffs in this action, by Edward Hinkley their attorney, complain, that whereas, before and at the time of the making the several promises and undertakings of the said William G. Cook, hereinafter mentioned, the said John L. Moffat and Joseph Curtis, and the said Jonathan Wilmarth were partners in trade and merchandise, in the State of New York aforesaid, and were then carrying on their said trade jointly, under the style, name and firm of Wilmarth, Moffat and Curtis; and the said William G. Cook, in the lifetime of the said Jonathan Wilmarth, since deceased, to wit, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and thirty-three, to wit, at the district aforesaid, was indebted to the said Jonathan Wilmarth, John L. Moffat, and Joseph Curtis in the sum of seven thousand dollars lawful money of the United States, for divers goods, wares and merchandise, by the said Jonathan Wilmarth, (now deceased,) and the said John L. Moffat and Joseph Curtis, before that time sold and delivered to the said William G. Cook, at his special instance and request; and also, in the further sum of seven thousand dollars, like lawful money, for money by the said Jonathan Wilmarth, John L. Moffat and Joseph Curtis before that time lent and advanced to, and paid, laid out and expended for the said William G. Cook, and at his like special instance and request; and also, in the further sum of seven thousand dollars, like lawful money, for other money by the said William G. Cook before that time had and received to and for the use of the said Jonathan Wilmarth, John L. Moffat and Joseph Curtis. And the said William G. Cook, being so indebted, in consideration thereof, afterwards, and in the lifetime of the said Jonathan Wilmarth, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said Jonathan Wilmarth, John L. Moffat, and Joseph Curtis, to pay them the said several sums of money in this count mentioned, when he, the said William G. Cook, should be thereunto afterwards requested.

Nevertheless, the said William G. Cook, not regarding his said several promises and undertakings, hath not yet paid the said several sums of money, or either of them, or any part of either of them, to the said Jonathan Wilmarth, John L. Moffat, and Joseph Curtis, in the lifetime of the said Jonathan Wilmarth, or to the said John L. Moffat and Joseph Curtis, or either of them, since the death of the said Jonathan Wilmarth, although often requested so to do, but he to do this, hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiffs twelve thousand dollars lawful money aforesaid, and thereupon they bring their suit.

EDWARD HINKLEY,
Attorney for Plaintiffs.

A copy of which said declaration was made and sent, with the said writ to the marshal of the district aforesaid, thereon endorsed " copy has to be served on the defendant with the writ."

At which mentioned first day of November, in the year of our Lord one thousand eight hundred and thirty-five, being the day of the return of the aforegoing writ, come into the circuit court here the said John L. Moffat and Joseph Curtis by their attorney aforesaid, and the marshal of the district of Maryland aforesaid, to wit, Nicholas Snyder, gentleman, to whom the aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

" Cepi. July 11th.

NICHS. SNYDER, *Marshal.*

RULE PLEA.

And the said William G. Cook being called, appears in the circuit court here, by John Glenn his attorney. And thereupon, on motion of the said John L. Moffat and Joseph Curtis, by their attorney aforesaid, it is ruled by the circuit court here, that the said William G. Cook answer to the declaration aforesaid of the said John L. Moffat and Joseph Curtis, in the plea aforesaid; or judgment by the court here will be entered against him in default thereof.

And the said William G. Cook, by his attorney aforesaid, defends the force and injury when, and so forth, and prays leave of the court here to imparle until the eighth day of April next, and then to answer unto the declaration aforesaid of the said John L. Moffat and Joseph Curtis, in the plea aforesaid, and to him it is granted; the same day is given to the aforesaid John L. Moffat and Joseph Curtis.

At which said eighth day of April, in the year of our Lord one thousand eight hundred and thirty-six, to which said day, the said William G. Cook had leave to imparle, and then to answer to the declaration aforesaid of the said John L. Moffat and Joseph Curtis, in the plea aforesaid, come again into the circut court here, as well the said John L. Moffat and Joseph Curtis, by their attorney aforesaid, as the said William G. Cook, by his attorney aforesaid.

PLEA AND ISSUE.

And the said William G. Cook, by his attorney aforesaid, as before, defends the force and injury when and so forth, and saith that he did not assume upon himself in manner and form as the aforesaid John L. Moffat and Joseph Curtis above against him have complained; and of this he puts himself upon the country, and the said John L. Moffat and Joseph Curtis in like manner, and so forth.

AVERMENT RELINQUISHED.

And the said William G. Cook, by his attorney aforesaid, relinquishing the averment aforesaid, above by him pretended, says that he cannot deny the action aforesaid of the said John L. Moffat and Joseph Curtis, so as aforesaid against him brought, nor but that the aforesaid John L. Moffat and Joseph Curtis have sustained damages to the sum of twelve thousand dollars, current money, by occasion of the non-performance of the promises and assumptions aforesaid, in manner and form as the said John L. Moffat and Joseph Curtis above against him have declared.

Yet the said William G. Cook, by his attorney aforesaid, further saith, that this confession is by him made, subject to the opinion of the court upon the following case stated, to wit:

CASE STATED.

JOHN L. MOFFAT and JOSEPH CURTIS, surog. partners of JONATHAN WILMARTH *vs.* WILLIAM G. COOK.	In Circuit Court of the United States, fourth circuit, district of Maryland.

Statement of Facts.—John L. Moffat, Joseph Curtis and Jonathan Wilmarth (the last of whom is now deceased) were citizens of the State of New York, and resident there, and partners trading under the name and firm of Wilmarth, Moffat & Curtis, and the defendant was a citizen and resident of Maryland, during the times when the contracts and transactions, upon which this suit is founded, or which constitute the causes of this action, were entered into and had and made between the said firm and said Cook.

That the course of dealing was, that Cook, the defendant, used to write to said firm, ordering such articles or goods as he wanted, and they, said firm, sent them to him, and charged the goods in their books. In order to settle the account current from time to time, Cook sent to the said firm (usually by mail, sometimes, perhaps, otherwise) his note at six months, and these notes averaged $500 per month, and was punctually paid, for a time, in Baltimore. Cook at

length became embarrassed, and wanted extensions, until he stopped payment entirely; being then indebted to said firm, on book account - - - - - - $2,104 98

And owing 1 note, due 4th April, 1832, for - 500
1 note, due 14th May, " for - 500
1 note, (do not know exactly when due) 416 02
1 note, due 2d June, 1832, for - 500
1 note, due 30th June, 1832, for - 500
1 note, due 1st July, 1832, for - 800
1 note, due 13th August, 1832, for - 500
1 note, due 24th September, 1832, for - 500

Total debt - - - $6,321 00

The above notes were remitted by Mr. Cook to said firm previously to March, 1832, when he stopped payment. On 7th June following, his New York creditors generally agreed to give him time to pay, and the said firm of Wilmarth, Moffat and Curtis, about that time, by arrangement made with Mr. Disosway, Cook's attorney in New York, gave time, and took Cook's three notes, drawn payable to the said firm, for the sums following, all dated 12th May, 1832, as the respective time as follows, viz:

One 12 months after date, for - - - - $2,107
One 15 months after date, for - - - - 2,107
One 18 months after date, for - - - - 2,107 03

$6,321 03

These notes were drawn and dated at Baltimore, by Cook, and sent by him to his said attorney, at New York, and there delivered by said attorney to the said firm; they were given for the amount of Cook's account, and the notes then had and held by said firm against Cook; the old notes being then given up to his attorney. These three notes and the consideration thereof, viz: the goods sold and delivered as aforesaid, constitute the ground of this action; the amount of the notes being the amount claimed. It is also admitted that said Cook has applied for and obtained the benefit of the insolvent laws of Maryland, since such notes fell due.

EDWARD HINKLEY,
Attorney for Plaintiffs.
J. GLENN,
For Defendant.

Upon the foregoing statement of facts, the plaintiffs pray for a general and unqualified judgment, notwithstanding the release of Cook, since the making of said notes, under the insolvent laws of Maryland; and the plaintiffs rely upon the cases. [Ogden & Saunders, 12 Wheat. 213. Boyle *vs.* Zacharia, and Turner, 6 Peters 634. Fray & Kirk, 4 Gill. and John. 509.

The circumstance of the notes being dated and made at Baltimore, in favor of citizens, at the time, of New York, does not make the contract a *Maryland contract*, any more than did the *acceptance* of bills of exchange by Mr. Ogden, in the State of New York, make such acceptance a New York contract, so as to be discharged by Mr. Ogden's release under the insolvent laws of that State.

The evidences of contracts made between citizens of different States cannot bear date in both the States of the respective parties. In the nature of things, and according to the course of business, they would bear date and be signed by one party only, in *one* of the States; most commonly in the State of the citizenship and residence of the party *signing*. And it would be immaterial in principle in which of the States it might bear date. It is a contract between citizens of different States at the time when made, and this is the fact and the principle which excludes it from the operation and effect of a release of the debtor under the insolvent laws of *his State*.

EDWARD HINKLEY,
Attorney for Plaintiffs.

1. The defendant's attorney insists that the contract was to be performed in Maryland, and governed by the laws of Maryland, and that the judgment must be to exempt the future acquisitions of the defendant from execution.

2d. That at all events, the judgment must be so entered as to exempt the defendant's person from arrest.

J. GLENN,
For Defendant.

JUDGMENT FOR THE PLAINTIFF UPON THE CASE STATED.

Whereupon, all and singular the premises being seen, heard, and by the court here fully understood, for that it appears to the court, that the said John L. Moffat and Joseph Curtis are entitled to recover in the plea aforesaid. Therefore, it is considered by the court here, that the said John L. Moffat and Joseph Curtis recover against the said William G. Cook, as well the sum of twelve thousand dollars, current money, the damages in the declaration of the said John L. Moffat and Joseph Curtis mentioned, as the sum of seventeen dollars and twenty-five cents adjudged by the court here unto the said John L. Moffat and Joseph Curtis, on their assent, for their costs and charges by them about their suit in this behalf laid out and expended. And the said William G. Cook in mercy, &c.

Memorandum.—Judgment rendered in this cause on this 21st day of April, 1836, for the damages laid in the declaration and costs of suit; the said damages to be released on payment of $7,335 57, with interest from 21st day of April, 1836, and costs of suit.

Memorandam.—That no execution against the person of the defendant be issued in the above cause on said judgment without the leave of the court.

Afterwards, to wit, on the 5th day of January, in the year of our Lord one thousand eight hundred and thirty-eight, the aforesaid William G. Cook, by his attorney aforesaid, produced to the said circuit court here, the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the second Monday in January, instant; which said writ of error is in the words and of the tenor following, to wit:

WRIT OF ERROR.

UNITED STATES OF AMERICA, *ss.*
The President of the United States:

To the judges of the circuit court of the United States for the district of Maryland—greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, John L. Moffat and Joseph Curtis, plaintiffs, and William G. Cook defendant, a manifest error hath happened, to the great damage of the said William G. Cook, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January instant, in the said supreme court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said supreme court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the first Monday in August, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued 5th January, 1838.

[SEAL.] THOMAS SPICER,
Clerk Circuit Court.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the

record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of orror, are hereby transmitted to the said Supreme Court of the United States accordingly.

BOND FOR COSTS.

Know all men by these presents, that we, William G. Cook and John Glenn, of the city of Baltimore, are held and firmly bound unto John L. Moffat and Joseph Curtis in the just and full sum of five hundred dollars lawful money of the United States to be paid to the said John L. Moffat and Joseph Curtis, their certain attorney, heirs, executors, administrators or assigns; to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this 6th day of January, in the year of our Lord one thousand eight hundred and thirty-eight.

Whereas, at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the eighth day of April, in the year of our Lord one thousand eight hundred and thirty-six, the said John L. Moffat and Joseph Curtis, by the judgment of the same court, recovered against the said William G. Cook, the sum of seven thousand three hundred and thirty-five dollars and fifty-seven cents, with interest from the twenty-first day of April eighteen hundred and thirty-six, and costs of suit in that behalf laid and expended. And whereas, the said William G. Cook hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said John L. Moffat and Joseph Curtis, citing and admonishing them to be and appear ar the Supreme Court of the United States, to be held at the city of Washington on the second Monday in January instant.

Now, the condition of the above obligation is such, that if the said William G. Cook shall well and truly prosecute with effect his said writ of error, and pay to the said John L. Moffat and Joseph Curtis the damages, costs and charges which may be awarded by the said supreme court, in case he shall fail to make his plea good, then the above obligation to be void, otherwise to be and remain in full force and virtue.

W. G. COOK. [SEAL.]
JOHN GLENN. [SEAL.]

Signed, sealed, and delivered in presence of
SAMUEL PICKING.

Approved:
R. B. TANEY.

CITATION.

THE UNITED STATES OF AMERICA,

To John L. Moffat and Joseph Curtis, surviving partners of Jonathan Wilmarth—greeting.

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington on the second Monday in January, instant, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein William G. Cook is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said William G. Cook in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf. Witness my hand and seal, this 6th day of January, 1838.

[SEAL.] R. B. TANEY.

I acknowledge service of the above citation.

EDWARD HINKLEY,
Attorney for Plaintiffs.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this eighth day of January, in the year of our Lord one thousand eight hundred and thirty-eight.

THOMAS SPICER, *Clk Cir. Ct.*